

## § 457.131

### 10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning or removing any damaged trees.

### 11. Settlement of Claim

(a) We will determine your loss on a unit basis.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the dollar amount of insurance per acre for each age group;

(2) Totaling the results in section 11(b)(1);

(3) Multiplying the total dollar amount of insurance obtained in section 11(b)(2) by the applicable percent of loss, which is determined as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Subtract the result obtained in section 11(b)(3)(i) from the actual percent of loss;

(iii) Divide the result in section 11(b)(3)(ii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows:  $100\% - 75\% = 25\%$ ;  $70\% - 25\% = 45\%$ ;  $45\% \div 75\% = 60\%$ .); and

(4) Multiply the result in section 11(b)(3) by your share.

(c) The total amount of loss will include both trees damaged and trees destroyed as follows:

(1) Any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged; and

(2) Any percent of damage by uninsured causes will not be included in the percent of loss.

### 12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 35668, July 2, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 75 FR 15887, Mar. 30, 2010; 76 FR 4804, Jan. 27, 2011]

## § 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2012 and succeeding crop years are as follows:

### FCIC Policies

## 7 CFR Ch. IV (1–13 Edition)

### DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

### Macadamia Nut Crop Provisions

#### 1. Definitions

**Age.** The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. An age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

**Crop year.** A period beginning with the date insurance attaches to the macadamia nut crop and extending through the normal harvest time. The crop year is designated by the calendar year in which the insurance period ends.

**Direct marketing.** Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the orchard for the purpose of picking all or a portion of the crop.

**Graft.** The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

**Harvest.** Picking of mature macadamia nuts from the ground.

**Interplanted.** Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

**Pound.** A unit of weight equal to 16 ounces avoirdupois.

**Production guarantee (per acre).** The number of wet, in-shell pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

**Rootstock.** The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

**Wet in-shell.** The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk but prior to being dried.

#### 2. Unit Division

(a) Section 34(b)(1) of the Basic Provisions is not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) Is located on non-contiguous land.

### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(a) You may select only one price election for all the macadamia nuts in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each macadamia nut type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(c) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the orchard or trees require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the po-

tential of the insured acreage for the crop year.

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions (§457.8), there is a one year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2001 crop year production report, you will provide your 1999 crop year production.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is August 31 preceding the cancellation date.

### 5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are December 31.

### 6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all macadamia nuts in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a rootstock that is adapted to the area.

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 200 pounds of (wet, in-shell) macadamia nuts per acre in a previous crop year; and

(e) That are produced from blooms that normally occur during the calendar year in which insurance attaches and that are normally harvested prior to the end of the insurance period.

### 7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, macadamia nuts interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

### 8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

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(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of macadamia nuts on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

### 9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Volcanic eruption;

(5) Wildlife, unless proper measures to control wildlife have not been taken; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the macadamia nuts for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

### 10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest, so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

### 11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

## Federal Crop Insurance Corporation, USDA

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(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (wet, in-shell pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

### 12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 35664, July 2, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 75 FR 15887, Mar. 30, 2010; 75 FR 59057, Sept. 27, 2010]

## § 457.132 Cranberry crop insurance provisions.

The cranberry crop insurance provisions for the 1999 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

### Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

### Cranberry Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

#### 1. Definitions

*Barrel.* 100 pounds of cranberries.

*Harvest.* Removal of the cranberries from the bog.

*Market price.* The cash price per barrel of cranberries offered by buyers in the area in which you normally market the cranberries.

#### 2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

#### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the cranberries in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) Any damage, removal of vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the removal of vines, damage, change in practices, and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as